IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1958.

No. 799.

WILLIAM H. ANDERSON and HARRY J. HAGEN,
Petitioners,

vs.

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

REPLY MEMORANDUM FOR PETITIONERS.

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ARGUMENT.

1) The Government in its memorandum misinterprets the Hobbs Act, 18 U. S. C. 1951 (a), and the offenses punishable thereunder (G. Memo. 3, 12, 13). Petitioners believe that the rule of ejusdem generis is applicable here in construing the statute. The pertinent provisions of the above statute are:

> "Whoever in any way or degree obstructs, delays or affects commerce or the movement of any article • • • **by robbery or extortion or attempts or conspires so to do, or commits or threatens violence** • • •" (Emphasis ours).

The phrase "or attempts or conspires so to do" refers back to robbery or extortion, as "threatens" refers back to "commits" in reference to acts of violence. The phrase "or attempts or conspires so to do" does not refer back to "whoever in any way or degree obstructs * * *". It is explanatory of the crimes within the scope of the statute which are necessary to come within federal jurisdiction. To hold otherwise would extend the Act beyond the intent of Congress and the cases decided in other appellate jurisdictions.

2) The Government erroneously argues that petitioners objected to the Trial Court's failure in its charge to the jury, to repeat the elements of Count III (G. Memo. 13-14). Petitioners maintain and contend that it was the **failure** of the Court to instruct in any manner as to the alleged crime in Count III that the Trial Court erred. The jury was left without a guide as to how they were to apply the facts to the law on this count.

3) The Government quotes the Trial Judge's interpretation of what the F. B. I. reports contained (G. Memo. 14). Petitioners point out specifically that the Assistant United States Attorney admitted that there were additional interviews had between agents of the United States Government and its witnesses, and that there were in existence other reports of these interviews as set forth in the Record on page 69. It was these existing reports which were screened by the Court and denied to petitioners. In view of this Court's decision in **Jencks v. United States**, 353 U. S. 657, which was controlling at the time of the trial, petitioners were erroneously denied access to these reports for use in their defense.

4) The Government's leading authority relative to newspaper publicity accompanying a trial is **United States v. Gicinto**, 8 Cir., 212 F. 2d 8 (G. Memo. 14-15). In the Gicinto

Case, the newspaper articles in question were not introduced into evidence and hence, no record was made relative to the contents of same. The case is not in point with this instant one. Other cases cited under this point by the Government were also at a variance with the issue involved herein.

Petitioners did not request the Court to poll the jury, in one instance, to ascertain who individually among them did read the newspaper articles in question since, as it was pointed out by counsel, that to do so would create greater prejudice against petitioners herein (R. 169).

Petitioners respectfully urge the Court to examine in detail the scathing newspaper articles and cartoons involved which were published during the course of the three week long trial and while the very issue propounded here was being at length argued, on more than one occasion, before the Court and the jury (R. 83, 173, 181). It is further pertinent to observe, that prior to the time the Court reconvened on July 1, 1957, and when the first editorial appeared in the morning newspaper, members of the jury were observed reading the morning daily St. Louis Globe-Democrat (R. 77).

5) Lastly, the Government endeavors to cloud over petitioners' point of error relative to the inquiry as to the division of the jury by the Trial Court. The Government assumes that the inquiry was not prejudicial inasmuch as it related to whether it was appropriate to dismiss the jury for the night (G. Memo. 15-16). The record is explicitly contrary to such an assumption (R. 212-213). When the jury was recalled, the Trial Court made several inquiries of the jury.

> "The Court: Do you think if given more time that perhaps you could arrive at a verdict?
>
> The Foreman: I doubt it very much, Your Honor."

The Court then inquired as to the division of the jury in their deliberations and, lastly, as to the jury's desire about staying or coming back the next day. The jury responded that they were pretty evenly divided in their deliberations as well as staying or returning the next day. The Trial Court then retorted: "All right. It is your own fault. They have thrown themselves on the tender mercy of the Court, and the Court has no mercy" (R. 213). After additional instructions pertaining to the desirability of reaching a verdict, the jury again retired for further deliberations. In the opinion of counsel, it is respectfully submitted, that the inquiry as to the division of the jury in their deliberations and in view of the other colloquy between the Court and jury, the jury was coereed into rendering a verdict to the prejudice of petitioners herein.

CONCLUSION.

For the reasons set out above and those heretofore set out in the petitioners' Petition for Writ of Certiorari, we respectfully say the writ should be granted.

Respectfully submitted,

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